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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Bernadette Craig,

No. CV 22-8066-PCT-JAT

10 Plaintiff,

11 v.

ORDER

12 Kilolo Kijakazi,
Commissioner of Social Security

13 Defendant.
14

15 Pending before the Court is Plaintiff Bernadette Craig's appeal from the
16 Commissioner of the Social Security Administration's ("SSA") denial of her application
17 for Disability Insurance Benefits ("DIB") and Supplemental Security Income ("SSI")
18 benefits. (Doc. 1). The appeal is fully briefed. (Doc. 12, Doc. 13, Doc. 15). The Court will
19 now rule.

20 **I. BACKGROUND**

21 The issues presented on appeal are whether the Administrative Law Judge ("ALJ")
22 erred in her "step three" analysis in finding Plaintiff was not per se disabled and whether
23 the ALJ failed to properly assess a medical source's opinion.

24 **A. FACTUAL OVERVIEW**

25 On July 22, 2019, Plaintiff filed for DIB pursuant to Sections 216(i) and 223 of the
26 Social Security Act. (Doc. 11-13 at 15; Doc. 11-6 at 2-5). She also applied, on August 6,
27 2019, for SSI pursuant to Title XVI of the Act. (Doc. 11-13 at 15; Doc. 11-6 at 6-16). Her
28 claims were denied initially and on reconsideration. (Doc. 11-3 at 2, 15).

1 Plaintiff then requested an administrative hearing before an ALJ. She appeared and
 2 testified on November 18, 2020. (Doc. 11-3 at 37-59). On February 25, 2021, (*Id.* at 15-
 3 31), the ALJ found that Plaintiff was not entitled to benefits because she could perform
 4 work existing in significant numbers in the national economy. (*Id.* at 29). The Appeals
 5 Council declined to review the decision.

6 **B. The SSA's Five Step Evaluation Process**

7 To qualify for Social Security benefits, a claimant must show she “is under a
 8 disability.” 42 U.S.C. § 423(a)(1)(E). A claimant is disabled if she suffers from a medically
 9 determinable physical or mental impairment that prevents her from engaging “in any
 10 substantial gainful activity.” *Id.* § 423(d)(1)-(2). The SSA has created a five-step process
 11 for an ALJ to determine whether the claimant is disabled. *See* 20 C.F.R. § 404.1520(a)(1).
 12 Each step is potentially dispositive. *See id.* § 404.1520(a)(4).

13 At the first step, the ALJ determines whether the claimant is “doing substantial
 14 gainful activity.” *Id.* § 404.1520(a)(4)(i). If so, the claimant is not disabled. *Id.* Substantial
 15 gainful activity is work activity that is both “substantial,” involving “significant physical
 16 or mental activities,” and “gainful,” done “for pay or profit.” *Id.* § 404.1572(a)–(b).

17 At the second step, the ALJ considers the medical severity of the claimant’s
 18 impairments. *Id.* § 404.1520(a)(4)(ii). If the claimant does not have “a severe medically
 19 determinable physical or mental impairment,” the claimant is not disabled. *Id.* A “severe
 20 impairment” is one which “significantly limits [the claimant’s] physical or mental ability
 21 to do basic work activities.” *Id.* § 404.1520(c). Basic work activities are “the abilities and
 22 aptitudes necessary to do most jobs.” *Id.* § 404.1522(b).

23 At the third step, the ALJ determines whether the claimant’s impairment or
 24 combination of impairments “meets or equals” an impairment listed in Appendix 1 to
 25 Subpart P of 20 C.F.R. Part 404. *Id.* § 404.1520(a)(4)(iii). If so, the claimant is disabled.
 26 *Id.* If not, before proceeding to step four, the ALJ must assess the claimant’s “residual
 27 functional capacity” (“RFC”). *Id.* § 404.1520(a)(4). The RFC represents the most a
 28 claimant “can still do despite [her] limitations.” *Id.* § 404.1545(a)(1). In assessing the

1 claimant's RFC, the ALJ will consider the claimant's "impairment(s), and any related
2 symptoms, such as pain, [that] may cause physical and mental limitations that affect what
3 [the claimant] can do in a work setting." *Id.*

4 At the fourth step, the ALJ uses the RFC to determine whether the claimant can still
5 perform her "past relevant work." *Id.* § 404.1520(a)(4)(iv). The ALJ compares the
6 claimant's RFC with the physical and mental demands of the claimant's past relevant work.
7 *Id.* § 404.1520(f). If the claimant can still perform her past relevant work, the ALJ will find
8 that the claimant is not disabled. *Id.* § 404.1520(a)(4)(iv).

9 At the fifth and final step, the ALJ determines whether—considering the claimant's
10 RFC, age, education, and work experience—she "can make an adjustment to other work."
11 *Id.* § 404.1520(a)(4)(v). If the ALJ finds that the claimant can make an adjustment to other
12 work, then the claimant is not disabled. *Id.* If the ALJ finds that the claimant cannot make
13 an adjustment to other work, then the claimant is disabled. *Id.*

14 **C. The ALJ's Application of the Factors**

15 At step one, the ALJ found that Plaintiff had not engaged in substantial gainful
16 activity since July 1, 2015. (Doc. 11-3 at 19). At step two, the ALJ found that Plaintiff had
17 a number of severe impairments: hidradenitis suppurativa, peripheral neuropathy,
18 osteoarthritis of the spine with radiculopathy and compression fractures of the T4 and T8
19 vertebrae, polycystic ovarian syndrome, morbid obesity, chronic pain syndrome, and an
20 unspecified anxiety disorder. (*Id.* at 19). The ALJ found that from January 1, 2015, through
21 December 31, 2016, Plaintiff's hidradenitis suppurativa would have been disabling
22 pursuant to Listing 8.06 of 20 CFR Part 404, Subpart P, Appendix 1, which requires
23 extensive skin lesions in both armpits despite following prescribed treatment. (*See id.* at
24 19–21); *See* 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 8.06.1. Plaintiff had surgical procedures
25 in 2015 and 2016 to address this condition and had recovered by the end of 2016. (*See id.*
26 at 21).

27 At step three, the ALJ determined that, beginning January 1, 2017, none of
28 Plaintiff's impairments met or equaled the severity of a listed impairment. (*Id.* at 22–23);

1 20 C.F.R. Pt. 404, Subpt. P, App. 1. The ALJ found that from January 1, 2017, until January
 2 8, 2019, Plaintiff could perform light work. (*Id.* at 25). The ALJ also found she could stand
 3 and walk for 4 hours; sit for 6 hours; could not operate foot controls; could occasionally
 4 climb stairs and ramps, stoop, crouch, kneel, and crawl; could not climb ladders, ropes, or
 5 scaffolds; and could frequently handle and finger bilaterally. (*Id.* at 25). Additionally, the
 6 ALJ found that Plaintiff developed mental limitations on January 8, 2019. And, as of July
 7 15, 2020, needed to use a cane to walk. (*Id.* at 25–27).

8 Based on that RFC finding and the testimony of a vocational expert, (*Id.* at 54), the
 9 ALJ determined at step four that although Plaintiff was able to return to her past relevant
 10 work between January 1, 2017, and January 8, 2019, she was not able to perform the past
 11 work since January 8, 2019. (*Id.* at 28). The ALJ found at step five, however, that Plaintiff
 12 was capable of other work in the national economy. (*Id.* at 28-29). Therefore, the ALJ held
 13 that Plaintiff was not disabled for purposes of SSI or DIB. (*Id.* at 31).

14 **II. LEGAL STANDARD**

15 This Court may not overturn the ALJ’s denial of disability benefits absent legal error
 16 or a lack of substantial evidence. *Luther v. Berryhill*, 891 F.3d 872, 875 (9th Cir. 2018).
 17 Substantial evidence means “More than a Scintilla ... but less than a preponderance.”
 18 *Smolen v. Chater*, 80 F.3d 1273, 1279 (9th Cir. 1996) (internal quotations omitted). It is
 19 “such relevant evidence as a reasonable mind might accept as adequate to support a
 20 conclusion.” *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017) (quoting *Desrosiers v.*
 21 *Sec’y of Health & Human Servs.*, 846 F.2d 573, 576 (9th Cir. 1988)). Under this standard,
 22 courts look at “an existing administrative record and ask[] whether it contains sufficient
 23 evidence to support the [ALJ’s] ... factual determinations.” *Biestek v. Berryhill*, 139 S.Ct.
 24 1148, 1154 (2019). This Court “must consider the entire record as a whole, weighing both
 25 the evidence that supports and the evidence that detracts from the [ALJ’s] conclusion, and
 26 may not affirm simply by isolating a specific quantum of supporting evidence.” *Id.* (quoting
 27 *Garrison v. Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014)). The ALJ, not this Court, draws
 28 inferences, resolves conflicts in medical testimony, and determines credibility. *See*

1 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995); *Gallant v. Heckler*, 753 F.2d.
 2 1450, 1453 (9th Cir. 1984). Thus, the Court must affirm even when “the evidence admits
 3 of more than one rational interpretation.” *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir.
 4 1984). The Court “review[s] only the reasons provided by the ALJ in the disability
 5 determination and may not affirm the ALJ on a ground upon which he did not rely.”
 6 *Garrison*, 759 F.3d at 1010.

7 Oftentimes, the ALJ’s decision is based on the weight the ALJ gives to evidence
 8 from physicians. In deciding whether these determinations were made appropriately, the
 9 Court must assess whether the ALJ complied with the 2017 revised rules for evaluating
 10 medical evidence. *See* 20 C.F.R. § 404.1520c. Prior to the 2017 revision, the rules required
 11 ALJs to give greater weight to the opinions of treating physicians over those of non-treating
 12 physicians. *Woods v. Kijakazi*, 32 F.3d 2022, 791 (9th Cir. 2022). The revised rules did
 13 away with this relationship-based assessment of physician evidence and replaced it with a
 14 standard based around the supportability and consistency of that evidence. *See id.*; 20
 15 C.F.R. § 404.1520c(a).

16 The revised rules require ALJs to consider five factors: 1. The supportability of the
 17 medical opinions, 2. how consistent the medical opinions are with evidence from both
 18 medical and non-medical sources in the claim, 3. the relationship between the medical
 19 source and the claimant, 4. whether the physician specializes in the types of disabilities
 20 involved in the claim, and 5. other general factors that either support or contradict that
 21 medical opinion. *See* 20 C.F.R. § 404.1520c(c).

22 In order for a person to be considered disabled under the Act, they must present
 23 “medical signs and findings, established by medically acceptable clinical or laboratory
 24 diagnostic techniques, which shows the existence of a medical impairment ...” 42 U.S.C. §
 25 423(d)(5)(A). “Objective medical evidence of pain or other symptoms established by
 26 medically acceptable clinical or laboratory techniques ... must be considered in reaching a
 27 conclusion as to whether the individual is under a disability.” *Id.* The focus of the inquiry
 28 set forth in the Act is on the accuracy and credibility of the medical opinions. The scientific

1 quality of the evidence is its benchmark. The Act does not focus the inquiry on whether
2 the physician is a treating physician or on the specific role he has. Thus, a rule that centers
3 on supportability and consistency fits more closely with the text of the Act.

4 ALJs are also required to make credibility determinations related to a claimant's
5 testimony. To undertake this analysis, the ALJ must engage in a two-part inquiry. First, he
6 must see whether there is "objective medical evidence of an underlying impairment which
7 could reasonably be expected to produce the pain or other symptoms alleged[.]" *See*
8 *Smolen*, 80 F.3d at 1281. Second, the ALJ must evaluate evidence relating to the intensity,
9 persistence, and limiting effects of the alleged symptoms. *See* 20 C.F.R. § 404.1529.
10 Notably, the claimant does not need to produce "objective medical evidence of the pain"
11 itself or of the causal relationship between the medically determinable impairment and the
12 symptom." *Smolen*, 80 F.3d at 1282. Furthermore, the claimant does not need to show that
13 the alleged impairment "could reasonably be expected to cause the severity of the
14 symptom," only that it could reasonably "have caused some degree of the symptom." *Id.*
15 If this two-part standard is met by the claimant, then the ALJ can only reject testimony
16 about the severity of the symptoms if he provides "specific, clear and convincing reasons
17 for doing so." *Id.* at 1281.

18 Under the third step, the ALJ asks whether the claimant's impairment or
19 combination of impairments meets or equals a listing under 20 C.F.R. pt. 404, subpt. P,
20 app. 1, which determines if an impairment caused by certain conditions is severe enough
21 to entitle the individual to benefits. *See* 20 C.F.R. pt. 404, subpt. P, app. 1. The impairment
22 must also meet the duration requirement. *See* 20 C.F.R. § 416.920(a)(4)(iii). In the case of
23 hidradenitis suppurativa, the impairment must persist for three months despite treatment.
24 *Id.* If both are met, the claimant is considered disabled and benefits are awarded, ending
25 the inquiry. *See id.*; *Kennedy v. Colvin*, 738 F.3d 1172, 1174 (9th Cir. 2013).

26 **III. ANALYSIS**

27 Plaintiff claims that the ALJ failed, at step three, to find Plaintiff's hidradenitis
28 suppurativa was disabling pursuant to Listing 8.06. (Doc. 12 at 12). She asserts that the

1 ALJ did not adequately credit her consultative examination. (*Id.* at 14). She also states that
 2 the ALJ did not adequately address her dermatologist records. (*Id.* at 13). Furthermore,
 3 Plaintiff contends that the ALJ impermissibly dismissed the medical findings of a nurse
 4 practitioner. (*Id.* at 14-18). This Court finds that the ALJ's decision is supported by
 5 substantial evidence. Thus, the ALJ's determination will be upheld.

6 **A. Step Three Analysis**

7 Plaintiff claims that the ALJ erred in her determination that Plaintiff's hidradenitis
 8 suppurativa was not severe enough to satisfy Listing 8.06. (*Id.* at 12–13). While Plaintiff
 9 points to evidence that suggests her condition was disabling, there is also strong evidence,
 10 which the ALJ cited, that supports her determination that Plaintiff was not disabled.
 11 Consequently, substantial evidence supports the ALJ's determination that Plaintiff's
 12 impairment was not severe enough to meet or equal a listing under 20 C.F.R. pt. 404, subpt.
 13 P, app. 1. Furthermore, substantial evidence supports the ALJ's determination Plaintiff's
 14 impairment did not meet the duration requirement. 20 C.F.R. § 416.920(a)(4)(iii).
 15 According to the CFR, for hidradenitis suppurativa to be to be severe enough to be
 16 disabling under Listing 8.06, a plaintiff must suffer from extensive skin lesions in both
 17 armpits, both sides of the groin, or the perineum, which persisted for at least three months
 18 despite continuing treatment as prescribed. 20 C.F.R. Pt. 404, Subpt. P, App. 1 § 8.06. The
 19 ALJ did not find that this was the case for Plaintiff. Thus, there is substantial evidence to
 20 support the ALJ's conclusion that the Plaintiff did not meet Listing 8.06. Because the
 21 evidence here is "susceptible to more than one rational interpretation" the ALJ's decision
 22 will be upheld. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

23 First, as the ALJ noted, the record does not indicate Plaintiff's skin lesions persisted
 24 despite continued treatment. (Doc. 11-3 at 22). The ALJ found that after 2017 Plaintiff did
 25 not receive substantive treatment for her hidradenitis suppurativa. (*Id.*). The ALJ also
 26 concluded that there was not currently evidence of an infection requiring major substantive
 27 treatment in the areas treated in 2016. (*Id.* at 21). Furthermore, the ALJ found Plaintiff was
 28 walking daily, which implied she did not have lesions or outbreaks in other body areas. (*Id.*

1 at 22). The ALJ also determined Plaintiff's medical records did not document extensive
2 skin lesions over this time period. (*Id.* at 22). Additionally, she noted that while Plaintiff
3 did receive an additional surgery in January 2020, it was only for the right armpit,
4 indicating she did not have extensive skin lesions in other areas, particularly her left armpit.
5 (*Id.* at 22). Because of this, the ALJ found that the bilateral requirement for hidradenitis
6 suppurativa under Listing 8.06 was not satisfied. (*Id.*). This Court thus concludes that
7 substantial evidence supports the ALJ's determination the Plaintiff's impairment was
8 insufficiently severe.

9 Substantial evidence also supports the ALJ's determination that Petitioner's
10 impairment did not persist long enough to be disabling. The ALJ found that, while there
11 was evidence that Plaintiff still has hidradenitis suppurativa, there was no evidence that she
12 required substantive treatment between January 2017 and January 2020. (*Id.* at 24). As
13 stated above, the ALJ noted that the procedure in 2020 only involved the right axilla. (*Id.*)
14 Thus, she did not meet the requirement that both axillae be affected. (*Id.*). The ALJ
15 determined that there was not evidence that she met the listing after her surgery in 2016,
16 and thus that she did not meet the duration requirement. (*Id.*).

17 Plaintiff claims the ALJ erred by failing to reference Plaintiff's dermatologist
18 records. (Doc. 12 at 13). Yet Plaintiff only started seeing a dermatologist in 2020. (*See id.*
19 at 13; Doc. 13 at 9). As noted above, at this time, Plaintiff only had an outbreak in her right
20 armpit. Because only one armpit was affected, and there were no other issues, as the ALJ
21 found, she did not meet the duration requirement for her impairment. Thus, the ALJ did
22 not need to reference her dermatology records. Even if the evidence contained in the record
23 could, with fair and accurate reading, at least possibly result in Plaintiff meeting Listing
24 8.06, where evidence is "susceptible to more than one rational interpretation" the ALJ's
25 decision will be upheld. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Thus, the ALJ's
26 order will be affirmed.

27 **B. The ALJ's Credibility Determination**

28 Furthermore, this Court affirms the ALJ's decision to reject Nurse Mickle's medical

1 opinion because substantial evidence supports the ALJ's assessment of the medical
2 source's opinion for credibility, supportability, and consistency. First, the ALJ noted that
3 Nurse Mickle's report consisted of a "checkbox style form with little to no rationale
4 provided for the selections made." (Doc. 11-3 at 27). Other examinations, which unlike
5 Nurse Mickle's did not recommend strict limitations on Plaintiff's exertional activity,
6 provided detailed rationales for their assessments and recommendations. (*Id.*). Second, the
7 ALJ found insufficient correlation between Ms. Mickle's observations and Plaintiff's
8 diagnosis. (*Id.*). The ALJ noted that although Plaintiff has neuropathy, back issues, and
9 hidradenitis suppurativa, she did not require major intervention for her hidradenitis, the
10 evidence of her back pain was "equivocal," and that she had at times denied symptoms of
11 neuropathy. (*Id.*). All of this suggested to the ALJ that Nurse Mickle's opinion was not
12 credible under the revised credibility rules. (*Id.*). The ALJ's decision to rely on other
13 medical opinions was substantially supported by the record.

14 **IV. CONCLUSION**

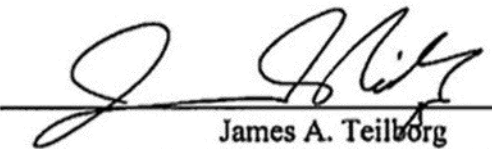
15 Accordingly,

16 **IT IS ORDERED** that the ALJ's decision is **AFFIRMED**.

17 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment
18 accordingly.

19 Dated this 28th day of April, 2023.

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James A. Teilborg
Senior United States District Judge